

# EXHIBIT 5



Tiffany R. Ellis | Partner

📍 Detroit, MI

📞 313-210-1559 📠 415-840-9435 ✉️ tellis@peifferwolf.com

May 20, 2024

**Via e-mail**

MICHAEL B. SHORTNACY  
mshortnacy@shb.com  
SHOOK, HARDY & BACON L.L.P.  
2049 Century Park East, Ste. 3000  
Los Angeles, CA 90067

PATRICK OOT  
oot@shb.com  
SHOOK, HARDY & BACON L.L.P.  
1800 K St. NW Ste. 1000  
Washington, DC 20006

KYLE N. SMITH  
ksmith@paulweiss.com  
JESSICA E. PHILLIPS  
jphillips@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
2001 K Street, NW  
Washington DC, 20006

***In Re: Uber Technologies, Inc. Passenger Assault Litigation***  
**NOTICE OF CLAWBACK CHALLENGE**  
**Case No. 3:23-md-03084-CRB**

Counsel:

I write on behalf of Plaintiffs in response to your May 10, 2024 letter regarding purportedly privileged documents produced in this litigation.

Although your letter references the Protective Order, Dkt. No. 176, the Privilege Order (PTO 14) most certainly applies to this dispute. The Protective Order clearly contemplates that the parties may meet and confer to agree upon additional protections

---

Peiffer Wolf Main Office  
935 Gravier St., Suite 1600  
New Orleans, LA 70112  
Main: (504) 523-2434

Los Angeles  
(213) 866-9662  
Cleveland  
(216) 589-9280

San Francisco  
(415) 766-3544  
St. Louis  
(314) 833-4826

New York  
(585) 310-5140  
Chicago  
(312) 374-8261

## NOTICE OF CLAWBACK CHALLENGE

May 20, 2024

Page 2

and modification of the order or seek Court resolution if unable to reach an agreement. As you know, after months of negotiations and briefing, the Court entered PTO 14 on April 4, 2024. The processes outlined by PTO 14 govern here. In accordance with that order, the following documents have been sequestered except to contest Uber's assertion of privilege.

Beginning Bates Number	Ending Bates number
UBER-MDL-3084- 000093375	UBER-MDL3084- 000093384
UBER-MDL-3084- 000093385	UBER-MDL3084- 000093390
UBER-MDL-3084- 000093391	UBER-MDL3084- 000093396
UBER-MDL-3084- 000093397	UBER-MDL3084- 000093420
UBER-MDL-3084- 000093421	UBER-MDL3084- 000093431

### Applicability of Protective Order

Even if the Protective Order solely applies, Uber did not follow its procedure. First, it appears by clawing these documents back in their entirety, Uber has made overly broad designations at best. Section 5.1 of the Protective Order reads:

If only a limited and clearly delineated part of the materials, documents, items, or oral or written communications qualify for protection, The Designating Party shall, to the extent practicable, make all reasonable efforts to designate for protection only those parts that qualify.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions, just as disclosure of Protected Material in violation of this order would do.

NOTICE OF CLAWBACK CHALLENGE

May 20, 2024

Page 3

Second, to date we have not received replacement copies of the documents in question as required by Section 5.3. Without appropriate replacements the time frames for dispute outlined in the Protective Order have not yet begun to run.

**Notice of Clawback Challenge**

In accordance with Section B(6) of PTO 14, Plaintiffs dispute the privilege asserted for the documents listed in your May 10, 2024 letter.<sup>1</sup> The reasons asserted for privilege in your letter are insufficient.

First, you cite to a privilege log that applied to these documents in the underlying litigation in which they were produced. Yet Uber has represented on numerous occasions in this MDL that *no* privilege logs were produced in *any* of those 86 cases.

After Plaintiffs provided exemplar documents from your productions with problematic redactions, Uber changed its position and now says it has identified eight (8) privilege logs. You have yet to produce any of those logs or identify whether any of those logs applies to the documents subject to Uber's Notice of Clawback.

Consistent with our related redaction discussions, we expect by Tuesday, May 21, you will produce the log applicable to the Clawbacked documents along with the other seven (7) you recently discovered. We also ask you to confirm the cases in which these logs were produced and that these eight (8) logs are the only logs that exist and relate to sexual-assault litigations.

Further, the mere fact that documents were withheld in earlier litigation – improperly perhaps – does not allow them to be withheld in this MDL. In addition, the mere fact that an attorney is included on a document (or any portion thereof) does not automatically implicate privilege.

No later than May 30, 2024, or within seven (7) business days, please either (i) withdraw Uber's claim of privilege or (ii) state the reasons for Uber's claims of privilege in detail, as required by PTO 14 and Federal Rule of Civil Procedure 26(b)(5).

As a reminder, Uber "retains the burden of establishing the applicability of the privilege or other protection as to any inadvertently produced materials and bears the

---

<sup>1</sup> In the unlikely event the Protective Order alone governs this dispute, Plaintiffs additionally dispute privilege in accordance with Section 6 of the Stipulated Protected Order. Dkt. No. 176.

NOTICE OF CLAWBACK CHALLENGE

May 20, 2024

Page 4

burden of making the disputed materials available to the Court for *in camera* review.”  
PTO 14 at 3.

Sincerely,



Tiffany R. Ellis  
[tellis@peifferwolf.com](mailto:tellis@peifferwolf.com)

Rachel B. Abrams  
Peiffer Wolf Carr Kane Conway & Wise, LLP  
555 Montgomery Street, Suite 820  
San Francisco, CA 94111  
[Rabrams@peifferwolf.com](mailto:Rabrams@peifferwolf.com)

Sarah R. London  
Lief Cabraser Heimann & Bernstein  
275 Battery Street, Fl. 29  
San Francisco, CA 94111  
[Slondon@lchb.com](mailto:Slondon@lchb.com)

Roopal P. Luhana, Esq.  
Chaffin Luhana LLP  
600 Third Avenue, F. 12  
New York, NY 10016  
[Luhana@chaffinluhana.com](mailto:Luhana@chaffinluhana.com)

cc: Jeff P. Johnson  
[jpjohnson@shb.com](mailto:jpjohnson@shb.com)  
Shook, Hardy & Bacon L.L.P.

[ubermddiscovery@chaffinluhana.com](mailto:ubermddiscovery@chaffinluhana.com)